

1 operations of TV 40, would I be correct in saying that  
2 you would not have been discussing that subject with  
3 David Gardner after the transition point in early '91?

4 A I can't say that I did or I didn't discuss  
5 it with him after that time. David and I have had  
6 conversations on a number of subjects, and I might  
7 have inquired how things were going. I don't -- but  
8 there was no business discussion for a project basis  
9 or for any kind of operational management input that  
10 I would have.

11 Q Did you, to your recollection, at any time  
12 after the transition was made at the end of the first  
13 quarter of 1991 -- any time after that, did you tell  
14 David Gardner that you were continuing to have  
15 discussions with cable operators about carrying  
16 Raystay's low power stations?

17 A I had no responsibility to do that. It's  
18 entirely possible that I may have had contact with an  
19 operator who may have inquired of me. If that would  
20 have occurred, I would have referred them to Lee  
21 Sandifer at that point. I don't recall any specific  
22 conversations.

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1           Q       Okay. Now, you testified earlier, if I  
2 recall, that when you were developing the concept for  
3 the low power stations, that you had some discussions  
4 with David Gardner at the Atlantic City Cable -- as I  
5 recall. And that either then or maybe before then,  
6 David Gardner had given you some input on the  
7 coverage, the technical facility, so that you were  
8 then able to develop the chart that you've referred  
9 to.

10                   Did David Gardner tell you, or to your  
11 knowledge, had David Gardner inspected the sites, the  
12 low power transmitter sites that were being proposed  
13 or that were in the construction plan?

14           A       It was my understanding that he had --  
15 that he had visited those sites and that he had  
16 discussions with the relevant individuals who were  
17 owners of those sites, one of which was, I think,  
18 Raystay.

19           Q       Raystay owned the Red Lion site, is that  
20 correct?

21           A       That's as I recall. We owned one of them.  
22 I thought it was Red Lion.

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1 Q Okay. Do you know who the owners of the  
2 Lebanon and the Lancaster sites were?

3 A No, I don't.

4 Q And you say that it was your understanding  
5 that David Gardner had inspected those sites. Where  
6 did you get that understanding?

7 A From David.

8 Q Did he tell you that he had done that?

9 A As I recall, yes.

10 Q And he told you also that he had spoken to  
11 the owners of the sites?

12 A As I recall the conversation, yes.

13 Q And the conversation that you're referring  
14 to with David Gardner, that was sometime in what, the  
15 Fall of 1990?

16 A As best I can place it, I would say it was  
17 in the Fall of 1990, yes.

18 Q Did he describe the sites to you,  
19 generally, do you know?

20 A Well, I do not recall that too well. He--  
21 he was somewhat precise in his description of the  
22 locations, yes. I -- I seem to recall something about

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1 rooftops. The tower -- Red Lion was a tower, as I  
2 recall and I'm -- my memory is hazy on the other  
3 sites.

4 Q Did he show you copies of any documents  
5 that were in the nature of antenna sketches or  
6 coverage patterns or anything like that?

7 A No. I don't recall seeing those  
8 documents. Our conversations, as I recall them, were  
9 descriptive and he gave me specifics in terms of how  
10 many miles he felt the station -- the transmitters  
11 would reach and also, referred to certain terrain  
12 features that would limit coverage.

13 Q I see. What do you remember about terrain  
14 features?

15 A It was a ridge. I can not -- I don't  
16 recall specifically where, but I believe it affected  
17 the -- if I remember correctly, the Lebanon site or  
18 the Lancaster site. There was a ridge that was going  
19 to block the signal at some point.

20 Q Was it your understanding --

21 A That -- that was relative to  
22 interconnecting the stations from one to the other

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1 from a microwave viewpoint.

2 Q Did David Gardner say that he had seen a  
3 ridge in the course of his site inspections?

4 A I do not recall whether it was that he had  
5 seen it or terrain features on maps or what it was.

6 Q And you said that David Gardner told you  
7 that he -- or at least lead you to understand that he  
8 had spoken to the owners of the sites. Putting  
9 Raystay aside, did he tell you what he had discussed  
10 with the site owners?

11 A No.

12 Q Did he tell you anything about the  
13 availability of those sites in terms of whether the  
14 owners were willing to make them available?

15 A It's my understanding the sites were  
16 available to us.

17 Q Did he tell you that he conducted  
18 negotiations with any of the owners for leases?

19 A That was my impression. Whether he  
20 specifically stated that, I can't say.

21 Q Do you know whether, at any time when you  
22 were working on the concept and on the plan, that

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1 Raystay commissioned or directed any of its engineers  
2 to make a study of the sites?

3 A I don't recall having that knowledge.

4 Q You mentioned earlier that you understood  
5 that the construction permits from the FCC were due to  
6 expire around the end of 1991. Do you know why no  
7 construction was begun by that time?

8 MR. COHEN: Does he know now?

9 BY MR. EMMONS:

10 Q Do you know now?

11 A Do I know now?

12 Q Right.

13 A I have my personal opinion, but I don't  
14 have specific knowledge.

15 Q Well, what's your personal opinion?

16 A That it had to do, to a certain extent,  
17 with the availability of capital.

18 Q In other words, in your opinion, the  
19 company did not have access to sufficient capital to  
20 start the project?

21 A It had uses -- many uses for its capital  
22 and they chose other options.

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1 Q Did you ever have a discussion with George  
2 Gardner about that?

3 A No.

4 Q Or David Gardner?

5 A No.

6 Q Lee Sandifer?

7 A No.

8 Q Anyone else in the company?

9 A No.

10 Q Did you ever hear any discussion that lead  
11 you to believe that that was the reason that the low  
12 power stations weren't constructed?

13 A Not that I recall.

14 Q During the period, last quarter of 1990 to  
15 the first quarter of 1991, approximately how much of  
16 your time were you spending on the low power project?

17 A A very small percentage overall, given the  
18 responsibilities I had at that time.

19 Q You say "very small," 10 percent, 20  
20 percent?

21 A Less than 10, less than five, most likely.

22 Q To your knowledge, was anyone else at

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1 Raystay spending more time on the project than you  
2 were?

3 A No.

4 Q Was it your understanding that George  
5 Gardner was looking primarily to you to develop the  
6 low power project at that time?

7 A Yes.

8 Q Now, were you aware around the end of 1991  
9 that Raystay filed applications with the FCC to extend  
10 its low power construction permits?

11 A I was not aware of that prior to its  
12 happening.

13 Q Now, the record will show that it happened  
14 in the latter part of December 1991. Did you become  
15 aware of it at about that time?

16 A I would say subsequent to that.

17 Q How much subsequent?

18 A I -- I don't recall when.

19 Q The record also shows that in July 1992,  
20 a second extension of construction permit was  
21 requested from the FCC by Raystay. My question to you  
22 is, were you aware about that time that Raystay was

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1 filing such a request?

2 A At that time, no.

3 Q Did you subsequently become aware that  
4 Raystay had done that in July 1992?

5 A Yesterday.

6 Q Yesterday, okay.

7 Now, have you ever seen a copy of the  
8 applications that Raystay filed with the FCC to extend  
9 its construction permits in December 1991?

10 A No.

11 Q As we speak, you still have not seen such  
12 an application?

13 A That's correct.

14 Q And I take it you would give the same  
15 answer with respect to the Raystay application that  
16 was filed in July 1992?

17 A That's correct.

18 MR. COHEN: Nat, can I see you outside for  
19 a second?

20 MR. EMMONS: Yes.

21 (Whereupon, off the record at 3:30 p.m.,  
22 until 3:31 p.m.)

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1 BY MR. EMMONS:

2 Q Mr. Etsell, have you seen these documents  
3 prior to yesterday or this week?

4 A Not prior to yesterday.

5 Q Okay. So I take it then from your answers  
6 that nobody at Raystay gave you a copy of Exhibit 1 or  
7 the related application to review at the time or about  
8 the time those applications were filed?

9 A That's correct.

10 Q Now I take it from what you said that you  
11 had a chance at least yesterday to look at what we  
12 refer to as Exhibit 1 so that you're generally  
13 familiar with the contents of it. My question is, in  
14 either December 1991 or January 1992 -- I'm sorry,  
15 July 1992, which are the times that these applications  
16 were filed that contain this Exhibit 1, at either of  
17 those times did anybody at Raystay question you or ask  
18 you about the status of any efforts you were then  
19 conducting with respect to the low-power television  
20 project?

21 A No.

22 Q One of the statements in Exhibit 1 at the

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1 very bottom of the first page of Exhibit 1, the second  
2 to the last line reads as follows, "It," meaning  
3 Raystay, "has also had continuing negotiations with  
4 local cable television franchises to ascertain what  
5 type of programming would enable the station to be  
6 carried on local cable systems."

7 My question to you is, are you aware of  
8 any negotiations between Raystay and cable television  
9 franchises with respect to the low power construction  
10 permits that were in progress either in December 1991  
11 or in July 1992 or during the period between December  
12 of 1991 and July 1992? Are you personally aware of  
13 such negotiations?

14 A No.

15 Q Okay. And would it be accurate to say  
16 that you had not had any such negotiations yourself  
17 prior to December of 1991, at least after the first  
18 quarter of 1991? Would that be correct?

19 A Can I hear that question read back?

20 Q Let me rephrase it, because it was very  
21 unartful. You have testified that in the last quarter  
22 of 1990 and the first quarter of 1991 you had

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1 discussions with several cable television operators  
2 about the possibility of cable systems in the local  
3 area carrying Raystay's low power television stations  
4 if and when those stations became operational.

5 And my question is, after the first  
6 quarter of 1991, is it accurate to say that you  
7 personally did not have any such discussions any  
8 longer with local cable television systems on that  
9 subject?

10 A Other than potentially an inquiry by a  
11 cable operator, no, I would say that that is a correct  
12 statement.

13 Q When you say "potentially an inquiry by a  
14 cable operator," you don't have a specific  
15 recollection now, do you?

16 A No. I do not have a specific  
17 recollection. I have a relationship with these people  
18 on a regular basis and it is quite possible that I  
19 entered into a brief discussion with them at some  
20 associated meeting which I don't recall.

21 Q When -- did you -- you've testified that  
22 you knew that you learned that the -- that Raystay in

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1 December 1991 had filed applications to extend its  
2 construction permits and you said that you learned  
3 that sometime fairly soon after December 1991. Am I  
4 remembering that correctly?

5 A I believe or it's my thought I was saying  
6 that I was informed that they had filed and received  
7 an extension.

8 Q Had received, okay. Now, did you know  
9 when you heard that how long the extensions were good  
10 for?

11 A No.

12 Q Did you ever hear of any company talk  
13 about any communications from the FCC concerning  
14 further extensions?

15 A I don't recall any knowledge during that  
16 period of time, no.

17 Q Did there come a time when you learned  
18 that Raystay had turned in or surrendered its low  
19 power construction permits?

20 A I learned of it yesterday.

21 Q So is it accurate to say, then, that you  
22 were not aware of that around March of 1993 when it

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1       happened?

2               A       That's correct.

3               Q       And it's accurate to say, I take it, that  
4       nobody at Raystay consulted with you about turning in  
5       those permits before that was done?

6               A       That's correct.

7               Q       Nobody sought your opinion on whether  
8       Raystay ought to turn them in or try to build the  
9       stations?

10              A       That's correct.

11              Q       Okay. Do you recall that in the fall of  
12       1992, just about a year ago now, Congress passed a  
13       bill over the President's veto regarding cable  
14       television, the Cable Television Act of 1992?

15              A       Yes.

16              Q       And do you recall or were you aware at the  
17       time that there were provisions in that new Act  
18       relating to what was known of course in the industry  
19       as "must carry"?

20              A       Yes.

21              Q       Was there any discussion of which you were  
22       aware or in which you participated with anyone at

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1 Raystay about the implications of new cable television  
2 "must carry" provisions for the low power television  
3 permits that were held by Raystay at that time?

4 A I don't recall specific conversations on  
5 the low power television stations other than TV 40.  
6 The Act, at least as I interpret it, would not grant  
7 TV 40 "must carry" status.

8 Q And I take it that that was a topic on  
9 which Raystay focused very carefully?

10 A I was not part of any serious discussions.  
11 There was some discussion on that, but it was more a  
12 general discussion on the Act and its implications for  
13 us as cable operators with "must carry" requirements.

14 MR. COHEN: Let's go off the record.

15 (Whereupon, at 3:42 p.m., off the record  
16 until 3:49 p.m.)

17 BY MR. EMMONS:

18 Q Just a couple of questions, Mr. Etsell.

19 On the programming concept that you've  
20 described, did Raystay ever operate on any other  
21 programming concept for the new low power stations  
22 other than the one you've described?

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1 A I don't understand your question.

2 Q Strike that. I don't either.

3 Did you develop any other ideas for  
4 programming format for the new low power stations  
5 other than the concept that you've described to us  
6 already and that you were discussing with the cable  
7 companies?

8 A Nothing that was ever pursued. There was  
9 a slightly different format when I first started  
10 developing the program that led me to what was written  
11 and that -- I don't even remember what the earlier  
12 concept, frankly. We developed the movie concept as  
13 being the proper -- and when I say "we," that was  
14 partially done through discussions with George  
15 Strimmel.

16 Q George Strimmel?

17 A Yes.

18 Q Okay. Were you aware of the refinancing  
19 arrangement between Raystay and financing sources that  
20 was entered into in the summer of 1992?

21 A I'm aware that it occurred.

22 Q Were you a participant in the process of

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1 discussions or negotiations that led to that  
2 agreement?

3 A Not with -- well, in the very, very early  
4 days back in the 1990 period I had some involvement  
5 primarily in helping develop the forecast over the ten  
6 year period for Raystay.

7 Q But that involvement ended by the end of  
8 the first quarter of 1991?

9 A That's correct, other than for the GH  
10 Cable property involvement in that discussion.

11 Q Are you aware of any restriction imposed  
12 on Raystay by lenders upon Raystay investing in  
13 activities that are not cable activities?

14 A I'm aware that that's a typical covenant  
15 and I'm aware today of that specific covenant, but I  
16 was not back in the period of 1991, 1992.

17 Q When did you become aware of that?

18 A Yesterday.

19 MR. EMMONS: Those are all the questions  
20 I have.

21 I would like to ask -- can we go off the  
22 record on this?

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1 MR. COHEN: Sure.

2 (Whereupon, at 3:51 p.m., off the record  
3 until 3:52 p.m.)

4 MR. COHEN: As long as it's not in the  
5 same area. I assume it's not.

6 MR. HOLT: Well, it's -- he testified that  
7 he was made aware yesterday of the restrictive  
8 covenant. My question is why, in what context?

9 MR. COHEN: Why he was made aware?

10 MR. HOLT: Correct.

11 May I phrase the question and you can  
12 object if you like?

13 BY MR. HOLT:

14 Q My question is, do you have an  
15 understanding as to why the subject of restrictive  
16 covenants was discussed during the preparation for  
17 deposition yesterday?

18 A I don't know why it was discussed, but I  
19 was in the room when it was discussed.

20 MR. COHEN: Okay. So he's answered the  
21 question.

22 BY MR. HOLT:

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1 Q Did the existence of a restrictive  
2 covenant have any effect or did that form the basis  
3 for your conclusion which you testified about earlier  
4 that Raystay may not have developed the low power  
5 television stations because it had capital problems?

6 MR. COHEN: I object to that. First of  
7 all, the witness didn't say they had capital problems.  
8 He said something quite different.

9 Secondly, I'm not going to direct him not  
10 to answer, but I want the record to reflect my basis  
11 for my objection. This witness speaks from absolute  
12 ignorance on this subject. It's clear he had nothing  
13 to do with anything and to ask him this question  
14 cannot possibly lead to relevant evidence because he  
15 has no knowledge or information. Now that I've said  
16 that, I'm not going to direct him not to answer the  
17 question.

18 Read the question back again, Mr.  
19 Reporter.

20 Listen to it and answer it as well as you  
21 can.

22 (Whereupon, pending question was played

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1 back.)

2 BY MR. HOLT:

3 Q Earlier you were asked if you had an  
4 understanding as to why the low power television  
5 stations were not constructed and you, if I recall  
6 correctly, testified that you thought it was because  
7 Raystay had problems with capital.

8 MR. COHEN: He didn't. That's not his  
9 testimony. He said nothing about problems with  
10 capital. That's not what he said.

11 MR. HOLT: I believe he said a lack of  
12 capital.

13 MR. COHEN: No, he didn't say a lack of  
14 capital. Ask the witness what he said. Don't  
15 characterize his testimony.

16 BY MR. HOLT:

17 Q Do you recall what you testified?

18 A Yes. I said in my opinion it chose other  
19 officers for use of his capital.

20 Q Okay.

21 MR. HOLT: That's it.

22 MR. SCHONMAN: My turn? Just a few

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1 questions.

2 MR. COHEN: Off the record.

3 (Whereupon, at 3:55 p.m., off the record  
4 briefly.)

5 CROSS EXAMINATION

6 BY MR. SCHONMAN:

7 Q Mr. Etsell, my name is Gary Schonman and  
8 I'm here appearing on behalf of the Chief, Mass Media  
9 Bureau. I'm the Bureau counsel, or co-counsel.

10 In any event, a few minutes ago my  
11 colleague Mr. Emmons asked you whether you had  
12 prepared any other plan for the low power station  
13 other than this "concept." My question for you is --  
14 well, and I believe you answered no, you had not,  
15 although there was something else that originally was  
16 there and that evolved into this concept.

17 My question for you is not whether you  
18 prepared any other plan, but whether Raystay generally  
19 ever had any other plan to use these low power  
20 stations other than this concept that you developed?

21 A I'm not aware of any plan prior to the one  
22 I suggested.

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1 Q Subsequent to the one that you developed?  
2 Do you know whether they had any other plans?

3 A I'm not aware of any.

4 Q Do you hold any opinion or have any  
5 understanding why your concept was never implemented?

6 A No, I don't have an opinion other than  
7 what I've already stated in terms of capital. I have  
8 no further opinion than that.

9 Q Well, your response about capital related  
10 to -- I believe the question was why weren't the  
11 stations constructed. Are you saying that that same  
12 response applies to why the plan was not implemented?

13 A Yes.

14 Q Did there come a time when you learned  
15 that the plan, that is this concept, was not going to  
16 be implemented?

17 A No, I'm not aware of any such decision.

18 Q You were shown a document earlier. It's  
19 a handwritten note from you to George Gardner, 75567.  
20 The subject was alternatives for change of proposal.  
21 Do you recall when you prepared that?

22 A May I refer to another document?

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1 Q By all means.

2 A I think the previous page is directly  
3 relevant to that same statement. It's dated 2/4/91.  
4 So, it would have been, I presume, about that time.

5 Q Late January or early February 1991. Now,  
6 in your handwritten letter to George Gardner you refer  
7 to the -- in the event that we are unable to develop  
8 our current plans. My question for you is did you  
9 have any belief or understanding or feeling at the  
10 time that it was possible that Raystay would not be  
11 able to implement the plan?

12 A No. I simply felt that one should never  
13 foreclose options.

14 Q Earlier you testified that selling the  
15 construction permits was always considered an option.  
16 My question for you is what is your basis for that?

17 A I believe what I said was that that was an  
18 option, but that leasing would have been the first  
19 choice. Again, a prudent businessman never precludes  
20 any options that's available to him.

21 Q Did you ever have any discussions with  
22 anyone associated with Raystay about selling the

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1 construction permits or possibly selling the  
2 construction permits?

3 A Whenever an offer was received and I  
4 became aware of it, there was a discussion as to  
5 whether it should be pursued or not pursued. Beyond  
6 that, I don't recall any specific conversations.

7 Q Do you recall when the first such offer  
8 was received by anyone associated with Raystay to sell  
9 the construction permits?

10 A I have testified of two or three  
11 different -- either been asked about or testified to  
12 two or three different offers that were made.  
13 Frankly, I don't recall which was first or which was  
14 last.

15 Q Do you know if any offers were received by  
16 Raystay to sell the construction permits before you  
17 were removed from the low power project?

18 A Well, obviously, Mr. Fenstermacher would  
19 be one.

20 Q Do you know why Raystay was inclined to  
21 entertain Mr. Fenstermacher's proposal?

22 A No. It would only be an opinion and I

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1 have no direct knowledge of why.

2 Q What's your opinion?

3 A I think it was an opportunity that came  
4 about where they could continue leasing essentially  
5 ownership of the television stations. It could lead  
6 to the development of the six station concept as  
7 easily as our doing it ourselves, and it preserved the  
8 ownership.

9 Q Is it fair to say then that in your  
10 opinion the relationship with Mr. Fenstermacher was  
11 not inconsistent with your concept plan for the  
12 stations?

13 A I'm not familiar enough with the details  
14 at this point to specifically answer that, but any  
15 programming concept that was effective could have been  
16 implemented. The plan could have been implemented  
17 with any programming concept that was considered to be  
18 effective in gaining viewership.

19 MR. SCHONMAN: I don't have any further  
20 questions.

21 MR. COHEN: Let me just speak with the  
22 witness outside for a second. I don't think I have

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